

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: §
Jerry Z. Shan, et al. § Confirmation No. 3123
§
Serial No.: 10/698,736 § Group Art Unit: 2863
§
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**BRIEF IN REPLY TO EXAMINER'S
ANSWER DATED AUGUST 24, 2009**

This Reply Brief is being filed in response to the Examiner's Answer dated August 24, 2009. As set forth below, the Appellants respectfully reiterate their request for the Board to review and reverse the Examiner's four grounds of rejection. In particular, the Examiner rejected independent claim 1 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Further, independent claims 1, 15, 22, and 27 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent Publication No. 2003/0009399 to Boerner (hereinafter "Boerner").

Claim 1 is Directed to Statutory Subject Matter

The general patent eligibility of claims is discussed in a recent memorandum issued to all Technology Center Directors of the United States Patent and Trademark Office. *See* Memorandum entitled "Effective Today: New Interim Patent Subject Matter

Eligibility Examination Instructions,” Andrew H. Hirshfield, Acting Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office, Aug. 24, 2009 (hereinafter “Interim Guidelines”) (available at http://www.uspto.gov/web/offices/pac/dapp/opla/2009-08-25_interim_101_instructions.pdf, last visited on Sep. 3, 2009). Although this document does not carry the force of law, it provides a useful guideline for analyzing patent claims under 35 U.S.C. § 101.

As directed by the memorandum, a first determination is made as to whether the claim is directed to a process. If so, using the broadest reasonable interpretation of the claim, identify if a machine or transformation is present, either explicitly or inherently, in the claim. If a machine or transformation is present, determine if the machine or article is “particular.” If a particular machine or transformation of a particular article is found, confirm that the particular machine or transformation meets the following two corollaries: (1) Confirm that the use of the particular machine or the transformation of the particular article imposes a meaningful limitation on the claim’s scope by, for example, being present in more than a mere field-of-use limitation, and (2) Confirm that the use of the particular machine or the transformation of the particular article involves more than insignificant extra-solution activity. *See id.*

The Appellants respectfully assert that claim 1 explicitly identifies a particular machine. More specifically, independent claim 1 recites a processor-based method which explicitly identifies a particular machine, i.e., a microprocessor. In addition to identifying a particular machine, claim 1 imposes a meaningful limitation on the scope of the claim, and the use of the particular machine involves more than insignificant extra-solution activity. All the steps of are performed by the microprocessor, which necessarily implies no insignificant extra-solution activity. *See “PROCESS EXAMPLE: CLAIM 5,”* in the materials attached to the Interim Guidelines.

Because claim 1 is a process claim that explicitly identifies a particular machine that imposes a meaningful limitation on the scope of the claim, and the use of the particular machine involves more than insignificant extra-solution activity, claim 1 recites patent eligible subject matter under 35 U.S.C. § 101.

Claims 1, 15, 22, and 27 are Patentable over Boerner

In the Examiner's Answer, the Examiner asserts that Boerner discloses "receiving a data stream comprising a plurality of temporally ordered data points [and] generating a plurality of sequences from a first portion of the data stream," as recited by claims 1, 15, 22, and 27. The Appellants respectfully disagree.

The Examiner attempts to equate the data set in Boerner with two distinct elements in the claims. The Examiner cites to paragraph [0034] of Boerner to support the assertion that Boerner discloses "receiving a data stream comprising a plurality of temporally ordered data points," as recited by claim 1. *See* Examiner's Answer, p. 4. Paragraph [0034] discusses the analysis of a plurality of time series data sets. Presumably, the Examiner equates the time series data sets with the data stream recited in the "receiving" limitation of claim 1. Yet, the Examiner also equates the time series data set with the plurality of sequences, recited in the "generating" limitation of claim 1. The Examiner states, "each data set would be interpreted as a plurality of sequences." *See* Examiner's Answer, p. 12. As such, the Examiner's interpretation equates the time series data set with both the received data stream and the generated plurality of data sequences.

However, claim 1 recites "generating the plurality of sequences from a first portion of the data stream." Under the Examiner's interpretation, Boerner would have to disclose generating **the time series data set** from a first portion of **the time series data set**. Clearly, Boerner does not so disclose.

Under the Examiner's interpretation of Boerner, the data stream and the plurality of sequences are not distinct. However, because the plurality of sequences is generated

from a first portion of the data stream, as recited in claims 1, 15, 22, and 27, the received data stream is clearly distinct from the plurality of sequences. Accordingly, Boerner does not disclose “receiving a data stream [and] generating a plurality of sequences from a first portion of the data stream,” as recited by claims 1, 15, 22, and 27.

Conclusion

The Appellants respectfully submit that all pending claims are in condition for allowance. If the Examiner or Board wishes to resolve any issue regarding the present application by way of a telephone conference, the Examiner or Board is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

Date: October 21, 2009

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